



UNITED STATES PATENT AND TRADEMARK OFFICE

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In re Application of	:
Charles R. Cantor et al	:
Serial No.: 09/880,988	: PETITION DECISION
Filed: June 13, 2001	:
Attorney Docket No.: 25491-2408	:

This is in response to applicants' petition under 37 CFR 1.181, filed December 4, 2002, requesting withdrawal of Finality of the last Office action.

A review of the file history shows that this application was filed on June 13, 2001, and was amended by a preliminary amendment on September 6, 2001, amending portions of the specification, canceling claim 9, and amending claims 4, 8, 17, 24, 36 and 39-40. In a first Office action, mailed January 30, 2002, the examiner divided the claims into three groups for purposes of restriction. Applicants replied by electing Group I, without traverse, claims 1-8, 10-20 and 25-45. The examiner in the next Office action, mailed April 3, 2002, set forth a rejection of claims 4 and 8 under 35 U.S.C. 112, second paragraph, for indefiniteness. The examiner also rejected claims 1-3, 5-7, 10-12 and 25-27 under 35 U.S.C. 102(b) as anticipated by Brennan. Claims 1-8, 10-12 and 25-27 were rejected under 35 U.S.C. 103(a) as unpatentable over Brennan in view of Schultz. Claims 1-3, 5-7, 10-12 and 25-45 were rejected under 35 U.S.C. 103(a) as unpatentable over Brennan in view of Shuber. Claims 1-3, 5-7, 10-20 and 25-27 were further rejected under 35 U.S.C. 103(a) over Brennan in view of Canard et al. Applicants replied on September 10, 2002, amending claims 4, 6, 17, 27-28, 31, 33, 36 and 42. Each of the rejections of record was addressed in the arguments.

The examiner mailed a Final Office action to applicants on October 4, 2002, in which claims 1-8, 10-20 and 25-27 were rejected under 35 U.S.C. 103(a) as unpatentable over Brennan in view of Canard et al and Schultz. Claims 28-45 were rejected under 35 U.S.C. 103(a) as unpatentable over Brennan in view of Canard et al, Schultz and Shuber. Responses to applicants' arguments were made and the action was made Final.

DISCUSSION

Applicants argue that the Office action is prematurely Final since two new rejections were set forth which were not necessitated by applicants' amendments. Applicants argue that the rejections set forth in the Final Office action use the same references, but combine them in a different manner and thus must be considered new rejections.

A review of the rejections made in the Final Office action shows that the rejections set forth are different from those set forth in the previous Office action. Claims 1-8, 10-20 and 25-27 are now rejected over three references, Brennan et al, Canard and Schultz, whereas they were previously rejected only over Brennan in view of Schultz. Although claims 4 and 8 are now included in this rejection when they were not previously rejected over prior art, they are both dependent claims and must be considered with the independent claim. In a similar manner, Claims 28-45 are now rejected over Brennan, combined with Schultz, Shuber and Canard et al whereas they were previously rejected over Brennan in view of Shuber. No examiner reason is given for justifying the change of rejection basis which would support the making of the Office action Final. It is especially noted that the independent claims were not amended, only dependent claims.

DECISION

Applicants' petition is **GRANTED**. The Finality of the last Office action, mailed October 4, 2002, is withdrawn. The Office action, which appears to be a complete action, is not withdrawn.

Applicants remain under obligation to reply to the last Office action under 37 CFR 1.111 within the time period set therein or as may be extended under 37 CFR 1.136(a).

Should there be any questions with respect to this decision, please contact William R. Dixon, Jr., by mail addressed to: Director, Technology Center 1600, Washington, D.C. 20231, or by telephone at (703)308-3824 or by facsimile transmission at (703) 305-7230..

John Doll 
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